

USSN 10/032370

A-036 US

**REMARKS****Double Patenting – Trogolo et. al. - US 6,866,859**

Claims 1-3 and 5-7 stand rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claim 1 of Trogolo et. al., US 6,866,859 ('859). It is stated that although the conflicting claims are not identical, they are not patentably distinct from each other because '859 recites a hydrophilic coating on an article wherein the hydrophilic polymer of the coating includes antimicrobial silver ion-containing zeolites. It is noted that while '859 does not recite the antimicrobial as particles, it shows that it is dispersed in the polymer which indicates that it is in the form of particles. Additionally, it is stated that although '859 does not recite the water absorption at equilibrium, it does not exclude the claimed ranges since it does not recite otherwise.

Applicants respectfully traverse the rejection and request reconsideration. As made clear by the claim amendments filed on August 28, 2009, claims 1-3 and 5-7 recite an antimicrobial additive in the form of hydrophilic polymer particles having incorporated therein particles of an antimicrobial water soluble glass and/or ceramic particles having ion-exchanged antimicrobial metal ions. While Applicants' antimicrobial additives could be used in substitution for the silver zeolites of '859, '859 does not teach or make obvious the antimicrobial additive particles of Applicants and the same are patentably distinct from the antimicrobial agents and polymer compositions of '859. Accordingly, the provisional obviousness-type double patenting rejection should be withdrawn.

**Double Patenting – Trogolo et. al. - US 7,357,949**

Claims 1-7, 10-22, 48-49 and 55-64 stand rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-42 of Trogolo et. al., US 7,357,949 ('949). It is stated that while the claims are not identical, the claims of '949 are directed to the same subject matter as the present claims.

Applicants traverse the rejection and request reconsideration. '949 claims antimicrobial polymer compositions comprising a polymer matrix having dispersed therein antimicrobial additives similar in composition to those of the present invention, though '949 does not claim additive particles wherein the antimicrobial agent comprises particles of an antimicrobial water soluble glass and does not teach or suggest the high aspect ratio as required of Applicants claimed antimicrobial additives. More importantly, it is to be recollected that the examiner previously required a restriction as between the instant claimed antimicrobial additive particles and antimicrobial polymer compositions comprising a polymer matrix having such antimicrobial additive particles dispersed therein (See the February 26, 2003 Restriction Requirement). There the examiner concluded that the antimicrobial additives were patentably distinct over polymer compositions containing the additives. Consequently, it cannot now be stated that the instant claims are not patentably distinct over '949. Accordingly, the provisional obviousness-type double patenting rejection should be withdrawn.

**Double Patenting – Trogolo et. al. – USSN 11/336,699**

Claims 1-7, 10-15, 22 and 48-49 stand rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-9 of Trogolo et. al., USSN 11/336,699 (now US 7,354,605) ('605) in view of Modak, US 20010010016 (Modak). It is stated that '605 discloses antimicrobial compositions comprising antimicrobial additive particles similar to and in some respects identical to those of the present claims with the exception that the particles are dispersed in a hydrophobic resin. Modak is said to disclose polymeric medical articles comprising combinations of triclosan and a silver-containing compounds wherein the polymer matrix of the polymer article is a hydrophobic polymer. It is alleged that it would have been obvious to one of ordinary skill in the art to coat or impregnate the silver antimicrobial with the hydrophobic polymer to enhance antimicrobial efficacy.

Applicants respectfully traverse the rejection and request reconsideration.

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The cited patent application, now an issued patent, is a division of '949 mentioned in the preceding section. This patent claims the use of the antimicrobial compositions of '949 wherein the matrix is a hydrophobic resin in medical articles.

As noted in the previous discussion, because of the earlier restriction requirement, it cannot now be stated that the instant claims are not patentably distinct over '605 in view of Modak. Furthermore it is to be noted that the application of Modak to the instant claims is inappropriate and directly opposite and contrary to the teaching of the present application. Specifically, as discussed in the instant application, coating the silver containing ceramic particles of Applicants with a hydrophobic resin, as opposed to the claimed hydrophilic resin, would render the antimicrobial agents ineffective. (See col. 2, lines 35-59 and col. 3, line 63 – col. 5, line 3). Accordingly, the provisional obviousness-type rejection should be withdrawn.


#### **Related Art**

Applicants acknowledge the related art; however, Applicants do not believe the art to be as pertinent as suggested by the examiner nor as baring patentability of the claims as currently presented. Specifically, Kuroda Ryuzo, JP 10-067,514, (Kuroda) discloses zeolite particles of varying dimensions and physical structure and their method or production. As noted in the above discussion and that of the Remarks filed on August 28, 2009, it is the dimensions of the hydrophilic polymer particles that are pertinent to the instant claims, not the dimensions of the antimicrobial ceramic particles to be incorporated therein.

#### **CONCLUSION**

With the submission of this Supplemental Response, Applicants have now fully responded to the Office Action of July 1, 2009. The undersigned once again apologizes for the oversight in not addressing the above issues in the response of August 28, 2009. Early and favorable reconsideration is respectfully requested.

Respectfully submitted,



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